

## TOWN OF TYNGSBOROUGH

Office of the Board of Selectmen

25 Bryant Lane

Tyngsborough, MA 01879

Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

**APPROVED**

### Board of Selectmen Meeting Minutes

Monday, September 17, 2012 at 6:00 P.M. Community Room, Town Offices, 25 Bryant Lane  
Members Present: Selectwoman Karyn Puleo, Selectman Rick Reault, Selectman Robert Jackson, Selectman Allen Curseaden, Selectman Corliss Lambert.  
Staff Present: Town Administrator Michael Gilleberto, Admin Assistant Therese Gay

The listing of matters are those reasonable anticipated by the Chairman which may be discussed at the meeting. Not all items listed may in fact be discussed, and other items not listed may also be brought up for discussion to the extent permitted by law.

#### 1. 6:00 PM Executive Session

##### **A. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.**

The Board voted on a motion by Selectman, second by Selectman to enter into Executive Session to discuss strategy with respect to conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel, and to return to open session. Roll Call Vote: Selectwoman Puleo, yes; Selectman Reault, yes; Selectman Jackson, yes, Selectman Lambert, yes.

The Board at the conclusion of the executive session voted on a motion by Selectman Reault, second by Selectwoman Puleo to enter into open session. Roll Call Vote: Selectwoman Puleo, yes; Selectman Reault, yes; Selectman Jackson, yes, Selectman Lambert, yes. The Board exited the Executive Session at 6:25 PM.

#### 2. 6:30 PM Open Meeting/Pledge of Allegiance/Board Introduction/Read Agenda

The Chairman called the meeting to order. The Pledge of Allegiance was recited. The Agenda was read by Rick Reault, Clerk. The Board was introduced.

#### 3. Meeting Minutes Review/Approve

##### **A. Monday September 10, 2012**

Approval deferred to Monday September 24, 2012

##### **Executive Session Minutes Review/Approve/Not Release**

##### **B. Monday September 10, 2012**

The Board voted 4-0-1 on a motion by Selectman Reault, second by Selectman Lambert, to approve but not release the exec session minutes of Monday September 10, 2012.

#### 4. Old Business

##### **A. Zoning By-Law Amendments – Comments to Planning Board**

The Board invited the Members of the Planning Board to come forward to discuss the proposed amendments to the zoning by-law. The Planning Board members present were William Gramer, Scott Hammer, Admin Assist Pam Berman and Jesse Johnson, Consultant. The Consultant read the following section to be amended the reason for the amendment and answered questions from the Board of Selectmen.

**Rules and Regulations and Fees** - The Special Permit Granting Authority shall adopt, and from time to time amend, Rules and Regulations, not inconsistent with the provisions of this By-law or Chapter 40A of the General Laws or other applicable provision of the General Laws, and shall file a copy of said Rules and Regulations with the Town Clerk. Such rules shall prescribe as a minimum the size, form, contents, style and number of copies of plans and specifications, the town boards or agencies from which the Special Permit Granting Authority shall request written reports and the procedure for submission and approval of such permits. The Special Permit Granting Authority may adopt, and from time to time amend, fees sufficient to cover reasonable costs incurred by the Town in the review and administration of special permits. **The applicant shall be responsible for payment of all fees associated with advertisement notice and postage.**

The Planning Board Chairman felt that the Town should not be paying the fees, and wanted to make the change by accepting the fees up front. No comments from the Board of Selectmen.

**1.16.15 Special Permit Conditions** - The Special Permit Granting Authority may impose such conditions, safeguards and limitations as it deems appropriate to protect the neighborhood or the Town including, but not limited to:

1. Dimensional requirements greater than the minimum required by this By-Law
2. Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, plantings or other devices;
3. Modification of the exterior features or appearances of the structure(s);
4. Limitation of size, number of occupants, method and time of operation, and extent of facilities;
5. Regulation of number, design and location of access drives, drive-up windows and other traffic features;
6. Requirement of off-street parking and other special features;
7. Requirement for performance bonds or other security; and
8. Installation and certification of mechanical or other devices to limit present or potential hazard to human health, safety, welfare or the environment resulting from smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise, vibration or any other objectionable impact generated by any given use of land.

**9. Requirement of an as-built plan and certification by the applicants engineer regarding a projects completion prior to issuance of an occupancy permit.**

The Planning Board wanted to ensure the approval of what is built. Selectman Reault asked if the contractors have to submit as built plans before occupancy there would be delays because the Planning Board meets only twice a month. The Consultant, Mr. Johnson clarified that this is for commercial site plans and not residential.

**2.12.41 Lot Area** - Lot area shall be determined by calculating the area within a lot excluding any area within the lot over which easements have been granted, provided that no area within a street shall be included in determining minimum lot area. **Minimum lot area shall consist of contiguous area exclusive of wetland and flood hazard areas as defined in Section 2.12.20 of this By-Law.** When the distance between any two points on lot lines is less than 50 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall not be considered in computing the minimum lot area unless the distance along such lot lines between such two points is less than 150 feet.

This change was to clean up the language and to add the referencing of the Section 2.12.20. Note from Town Counsel on the language using floodway vs flood hazard, the language will be corrected to reflect floodways. The Board had no other comments.

**2.12.42 Frontage** - Frontage shall be measured in a continuous line along the sideline of a street between the points of intersection of the side lot lines within the street.

A. Common Driveways can frontage.

B. Frontage that has no real and actual "access" from the street to each lot is illusory and that particular lot has no frontage. **Access is defined as the actual or potential provision of vehicular entry onto a lot by means of its frontage on a street to a degree**

**consistent with the use or potential use of the lot. For example, in the case of a residential lot, access shall mean that (1) there is sufficient right of vehicular passage onto the lot from the street on which it has frontage and (2) vehicular passage is or may be provided between the frontage and the dwelling unit on the lot.**

This change reflects the language needed to add the definition. The Board had no comments.

### **3.10.42 Parking Dimensions**

On any lot, in any district, with the exception of single and two family dwelling use, parking spaces and maneuvering aisles shall have the minimum dimensions as set forth in the following table.

<b>Minimum Parking Stall Dimensions (in feet)</b>			
<b>Angle of Parking</b>	<b>Width</b>	<b>Depth</b>	<b>Width of Maneuvering Aisle</b>
<b><i>Standard</i></b>			
45'-90'	10	20	22
Parallel	9	22	15
<b><i>Compact</i></b>			
45'-90'	9	16	<b>22-24</b>
Parallel	8	18	15
<b><i>Handicapped</i></b>			
45'-90'	<b>12 10</b>	<b>19 20</b>	22
Parallel	12	22	15

The parking dimensions have been changed is closer to the handicapped requirements in the ADA Standards. After a brief discussion the width of maneuvering aisle the standard changed from 22 to 24; the compact changed from 22 to 24; and the handicapped width changed from 12 to 10 and the parallel from 12 to 10, the depth changed from 19 to 20 and the width of maneuvering aisle changed from 22 to 24; all dimension are in feet. The Board commented on the dimensions and the added changes were made by the Planning Board.

### **4.10.30 Decision Criteria**

A special permit for a Major Business Complex shall be approved only upon determination of the Special Permit Granting Authority that the requirements of section 1.16.00 Special Permits including section 1.16.14 Mandatory Findings of Special Permit Granting Authority and the following additional criteria:

1. The proposed plan is consistent with any submittals made under section 4.10.20 and 4.10.21 or in the event of inconsistency, satisfactory explanation has been made submitted showing why the departure is necessitated by changed conditions or earlier error, and that the departure does not reduce compliance with the objectives for the Major Business Complexes specified in section 4.10.10.
2. The Complex shall be so designed and located such that annual average daily traffic is not increased more than 25% above current levels at any point more than 1,000 feet from the site, with current levels as determined by the Tyngsborough Planning Board; and shall be so located that resultant traffic is not above the capacity of roads and intersections at level of service "C" at any point within one mile of the premises, using definitions and methods of estimation as outlined by the Transportation Research Board Highway Capacity Manual, Special Report #209 or later editions.
3. Site design and storm water facilities shall be so designed that in a twenty-five year storm the peak stormwater flows leaving the premises will not be increased ~~more than 10%~~ above current flows or cause design capacity of receiving structures or channel capacity of receiving streams to be exceeded.

The change in paragraph 3 strike out was to bring the decision criteria in line with the State Regulations. The Board had no comments.

**4.11.21 Specific Requirements** - The application for a special permit under this section shall provide to the Special Permit Granting Authority:

1. ~~A site plan as per section 1.16.20. The application shall include the information outlined in Section 1.16.22, Application Contents, unless waived in accordance with Section 1.16.23 of this By-Law.~~
2. Analysis of the consequences of the proposed development, evaluation of the following impacts at a level of detail appropriate to the scale of development proposed.
  - a. Natural environment: groundwater and surface water quality, groundwater level, stream flows, erosion and siltation, vegetation removal (especially unusual species and mature trees), and wildlife habitats.
  - b. Public services: traffic safety and congestion, need for water system improvements, need for public sewage
  - c. Economics: amount and types of employment, labor force area.
  - d. Visual environment: visibility of buildings and parking, visual consistency with existing development in the area.

All applicants for a special permit under this are encouraged to consult with the appropriate Special Permit Granting Authority at a regularly convened meeting prior to formal application.

The change in this article is to clarify and make it consistent with sections 1.16.22 and 1.16.23 of the Zoning By-laws. The Board had no comments.

**4.11.30 Decision Criteria**

A special permit for a Major Industrial Complex shall be approved only upon determination by the Special Permit Granting Authority that the requirements of section 1.16.00 Special Permits including section 1.16.14 Mandatory Findings of Special Permit Granting Authority and the following additional criteria:

1. The proposed plan is consistent with any submittals made under section ~~4.20.20~~ **4.11.20** and ~~4.20.21~~ **4.11.21** or in the event of inconsistency, satisfactory explanation has been made submitted showing why the departure is necessitated by changed conditions or earlier error, and that the departure does not reduce compliance with the objectives for the Major Industrial Complexes specified in section 4.20.10.
2. The Complex shall be so designed and located that annual average daily traffic is not increased 25 %, or more, above current levels at any point more than 1,000 feet from the site, with current levels being as determined by the Tyngsborough Planning Board; and shall be so located that resultant traffic is not above the capacity of roads and intersections at level of service "C" at any point within one mile of the premises, using definitions and methods of estimation as outlined by the Transportation Research Board Highway Capacity Manual, Special Report #209 or later editions.
3. Site design and storm water facilities shall be so designed that in a twenty-five year storm the peak storm water flows leaving the premises will not be increased more than 10% above current flows or cause design capacity of receiving structures or channel capacity of receiving streams to be exceeded.

The change in this article is to correct a clerical error. The Board had no comments.

**4.14.00 Special Permit - Open Space Residential Development**

The Planning Board may grant a special permit for Open Space Residential Development in the R1 District for single family detached dwellings and accessory structures subject to the provisions of this section.

~~Town Meeting approval of an Open Space Residential Plan is required prior to the granting of a Special Permit.~~

The striking of the line will shortened the process and will use the expertise of the Planning Board Consultant and will be less costly. The Board had no comments.

**4.15.30 Decision Criteria** - A special permit for temporary independent living quarters shall be approved only upon a determination by the Special Permit Granting Authority that the requirements of Section 1.16.00 Special Permits including 1.16.14 Mandatory Finding of Special Permit Granting Authority and the following additional criteria have been met:

1. The proposed exterior changes to the principal residential unit are such that the appearance does not deviate to any substantial extent from the appearance of the residential dwelling prior to the change and conforms to the established residential character of the neighborhood.
2. That the total square foot areas of the proposed temporary independent living quarters not exceed 20% of the existing living space up to 700 square feet of living space.
3. That the design of the proposed living quarters be engineered to be easily assimilated or reincorporated into the primary structure for use once the need for the use ceases.
4. That the design incorporates the provision for additional off street parking areas as required.
5. That the proposed design and plan shows the provision for not more than one temporary independent living quarters per existing residential unit and that not more than one additional bedroom be constructed.
6. That the design and plan does not provide for separate metered utilities serving the proposed temporary independent living quarters.
7. A restriction including all the conditions must be recorded at the Middlesex North District Registry of Deeds together with a subordination agreement by any bank or lease holders.
8. The proposed temporary independent living quarter must be within or have a common wall with the single family dwelling unit and not be separated by a hall, stairwell or foyer. For the purpose of this section, the definition for a common wall is one that is connected, usable, and heated on both sides of the existing dwelling unit.
9. That the proposed temporary independent living quarters must be entered through the main dwelling unit and ~~may not~~ have ~~an one direct~~ independent exit directly to the outside side or rear, unless waived by the Special Permit Granting Authority for reasons of handicap accessibility.

The change in paragraph 9 was to satisfy the request of the Fire Department that there be one egress in the unit. The Planning Board did strike out the not to exceed 20% in paragraph 2. The Board had no comments.

#### **B. Special Town Meeting – initial review of warrant articles**

The Board reviewed the following special town meeting warrant articles this evening, Article 1 the citizen's petition and articles 15-49, the Assessors and Planning Board were in attendance to answer any questions the Board had.

##### **Article 1.**

Restrict garbage dumpsters to construction and remodeling only in an R-1 zone in Tyngsborough,  
Submitted by: Citizens' Petition.

The Board deferred action to the Monday September 24 meeting.

##### **Article 15.**

To see if the Town will vote to authorize its Board of Selectmen to grant to George W. Griffin the right and easement to use a portion of certain land owned by the Town and situated on Middlesex Road for all purposes related to the maintenance and replacement of a sanitary disposal system for use in connection with his residence situated at 208 Middlesex Road, or take any action in relation thereto. The Town property is part of the parcel identified in the Assessors records as Map 20A, Lot 57.  
Submitted by: Board of Selectmen

The Board will pursue a license agreement as recommended by Town Counsel.

Article 16.

To see if the Town will vote to accept the provisions of Massachusetts General Laws, Chapter 59 Section 5L, which would allow taxes to be deferred without interest or penalties for 180 days after return for any member of the Massachusetts National Guard or Reserves including dependents for service outside the Commonwealth of Massachusetts, or take any other action relative thereto.

Submitted by: Board of Selectmen [Veteran's Agent]

The Assessors are in favor and few members of the National Guard or Reserve would take advantage of this provision. The Board had no comments at this time.

Article 17.

To see if the Town will vote to accept the provisions of Massachusetts General Laws, Chapter 59 Section 5N, also known as Section 8A of Chapter 108 of the Acts of 2012, which would allow Veterans to participate in a volunteer tax work-off program. The maximum credit toward real property tax shall be no more than \$1,000, Veterans may be exempted due to a physical disability and another individual may perform the work on their behalf, and the maximum reduction amount may be based on 125 volunteer service hours in a given year rather than \$1,000, or take any other action relative thereto. Submitted by: Board of Selectmen [Veteran's Agent]

The Board did question the possibility of a husband and wife participating as a couple. Will leave the option to the Town Administrator.

Article 18.

To see if the Town will vote to accept the provisions of Massachusetts General Laws, Chapter 33 Section 59, which would allow National Guard and Reserve Soldiers to receive pay for emergency deployments ordered by the Governor or during their 17 days of required duty per year, or take any other action relative thereto. Submitted by: Board of Selectmen [Veteran's Agent]

There was an amendment in 2002 but did not give an origin this article clarifies the origin of the amendment. The Board will need a field of cost differences if three examples could be given. Comment on this article was deferred to the October 22 meeting.

Article 19.

To see if the Town will vote to accept the provisions of Massachusetts General Laws, Chapter 59 Section 5 clause 56, which would allow the Board of Assessors to abate 100% of the property taxes for the fiscal year during which a service member is serving in a combat zone, for up to a two year maximum, or take any other action relative thereto. Submitted by: Board of Selectmen [Veteran's Agent]

This article will be withdrawn from the warrant because there is no criteria in place to offer this relief.

Article 20.

To see if the town will accept the provision of General Laws, Chapter 59, Section 5 added by Chapter 184 Section 51 of the Acts of 2002, which authorizes the legislative body to reduce the requisite age of eligibility to any person age 65 or older. Submitted by: Board of Assessors

Article 21.

To see if the town will accept General Laws, Chapter 59, Section 5, Clause 41D, which authorizes an annual increase in the income (gross receipts) and asset (whole estate) limits for exemptions granted to senior citizens under General Laws, Chapter 59, Section 5, Clause 41C, by the percentage increase in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the previous year as determined by the Commissioner of Revenue, to be effective for exemptions granted for any fiscal year beginning on or after July 1, 2012. Submitted by: Board of Assessors

Article 22.

To see if the town will accept the provision of General Laws, Chapter 59, Section 5 added by Chapter 181 of the Acts of 1995, which authorizes an annual increase in the amount of the exemption granted to senior citizens, surviving spouses and surviving minors under General Laws, Chapter 59, Section 5, Clause 17D, by the percentage increase in the U. S. Department of Labor, Bureau of Statistics,

Consumer Price Index (COLA) for the previous year as determined by the Commissioner of Revenue, to be effective for exemptions granted for any fiscal year beginning on or after July 1, 2012. Submitted by: Board of Assessors

**Article 23.**

To see if the town will accept General Laws, Chapter 59, Section 5, Clause 17E, which authorizes an annual increase in the asset (whole estate) limits for exemptions granted to senior citizens under General Laws, Chapter 59, Section 5, Clause 17D, by the percentage increase in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the previous year as determined by the Commissioner of Revenue, to be effective for exemptions granted for any fiscal year beginning on or after July 1, 2012. Submitted by: Board of Assessors

Articles 20 to 23 deal with exemptions given to seniors and these are adjustments to the exemptions according to social security increases and changes.

**Article 24.**

To see if the town will establish the interest rate to be charged for deferred property taxes for certain seniors under General Laws, Chapter 59, Section 5, Clause 41A, for fiscal years beginning on or after July 1, 2012, which rate shall be 4%. Submitted by: Board of Assessors

The rate has been decreased to 4% from 8%.

**Article 25.**

To see if the town will accept the provision of General Laws, Chapter 59, Section 5K added by Chapter 27 Section 24 of the Acts of 2009, which authorizes the legislative body to increase the maximum property tax reduction seniors may earn performing work for their community amount to \$1000. In addition, they cannot receive credit for their services at an hourly rate higher than the state's minimum wage. As of January 1, 2012, that rate is \$8.00. Submitted by: Board of Assessors

The Board of Assessors has increased the senior work-off abatement to \$1,000.00 for 25 hours of service, this abatement is funded by the Assessor's Overlay Account. There were 8 participants this past year and hopefully there will be more participants for next year.

Articles 26 to 49 will be discussed at the Selectmen's meeting of September 24, 2012. There will be a notice sent to the abutters notifying them of the hearing on street acceptance the hearing will be Monday October 1, 2012. There are ongoing discussions on the streets to be accepted.

**5. New Business**

**A. Westford Road Project – Discuss Planning Board Request for Comment**

The Board reviewed the project and on the advice of Town Counsel will not comment on the project.

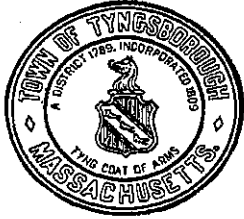
**6. Adjournment**

The Board voted 5-0-0 on a motion by Selectwoman Puleo, second by Selectman Lambert to adjourn the meeting. The meeting adjourned at 8:10 PM.

Respectfully Submitted by

Therese Gay  
Admin Assistant

Approved on Monday, October 22, 2012



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Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

### **Board of Selectmen Meeting Notice**

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**2. 6:30 PM Open Meeting/Pledge of Allegiance/Board Introduction/Read Agenda**

**3. Meeting Minutes Review/Approve**

- A. Monday September 10, 2012**

**Executive Session Minutes Review/Approve/Not Release**

- B. Monday September 10, 2012**

**4. Old Business**

- A. Zoning By-Law Amendments – Comments to Planning Board**  
**B. Special Town Meeting – initial review of warrant articles**

**5. New Business**

- A. Westford Road Project – Discuss Planning Board Request for Comment**

**6. Adjournment**

#### **Future Meetings**

**Monday, September 24, 2012 at 6:00 PM at the Town Offices [Tri-Board at 7:00 PM]**

**Monday, October 01, 2012 at 6:00 PM at the Town Offices**

**Special Town Meeting – Tuesday, October 16, 2012 at 7:00 PM at Tyngsborough Elementary School**

**Monday, October 22, 2012 at 6:00 PM at the Town Offices**

**Monday, October 29, 2012 at 6:00 PM at the Town Offices**